

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

VICTORIA'S SECRET STORES
BRAND MANAGEMENT, INC.,

Plaintiff,

v.

SEXY HAIR CONCEPTS, LLC,

Defendant.

Case No. 07cv-5804 (GEL)

ECF Case

**REPLY DECLARATION OF FRANK J. COLUCCI IN FURTHER SUPPORT OF
PLAINTIFF'S MOTION TO STRIKE THE DECLARATION OF JOHN F. METZGER**

FRANK J. COLUCCI, declares under penalty of perjury as follows:

1. I am a member of the law firm of Colucci & Umans, counsel for plaintiff, Victoria's Secret Stores Brand Management, Inc. ("Victoria's Secret").
2. I submit this reply declaration on behalf of Victoria's Secret in further support of Victoria's Secret's motion to strike the declaration of John F. Metzger and to authenticate for the Court documents that Victoria's Secret's reply memorandum references.
3. Exhibit 21 hereto is a true and accurate copy of the pertinent pages of the testimony deposition of Donna Federici, taken on September 29, 2004.
4. Exhibit 22 hereto is a true and accurate printout of a partial search result of retail stores in the "Beauty and Beauty Services" category for the Westfield Chicago Ridge shopping mall. Exhibit 22 includes retail store locations that carry Sexy Hair Concepts ("SHC") products, that were not included in the selective store listing attached to Mr. Metzger's May 2, 2008 Declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 13th day of June, 2008.



Frank J. Colucci

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **REPLY DECLARATION OF FRANK J. COLUCCI IN FURTHER SUPPORT OF PLAINTIFF'S MOTION TO STRIKE THE DECLARATION OF JOHN F. METZGER** was served on counsel for defendant, Roberta Jacobs-Meadway, Eckert Seamans Cherin & Mellott, LLC, Two Liberty Place, 50 South 16th Street, 22nd Floor, Philadelphia, Pennsylvania, 19102, by FedEx, on the 13th day of June, 2008.

A handwritten signature in blue ink, reading "Kathleen M. McGee", is written over a horizontal line.

EXHIBIT

21

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD

SEXY HAIR CONCEPTS LLC,)

Opposer,)

vs.)

V SECRET CATALOGUE, INC.,)

Applicant.)

COPY

Opposition No. 125, 739

(SO SEXY)

DEPOSITION OF DONNA FEDERICI

Chatsworth, California

Wednesday, September 29, 2004

Reported by:

MEGAN M. GROSSMAN

CSR No. 12586

JOB No. 152100

1 A No. I get an awful lot of information from the
2 hairstresser on the set. They will e-mail or they will
3 call, but I have been sitting in movies when I have been
4 watching a scene and just kind of flabbergasted that
5 there is my product in the shower.

6 The majority of the placement that I have
7 gotten, however, like on "Sorority Girls" and different
8 movies like that, is the intention of the hairstressers on
9 the set. They will display the products for me.

10 There are companies that will charge you a fee
11 that will get you placement. They work with production
12 companies to get that. I have never had to pay for that
13 sort of thing luckily.

14 Q You testified earlier about product
15 distribution.

16 A Yes.

17 Q And I believe you said in addition to the
18 distributors, Sexy Hair Concepts sells product to salon
19 chains?

20 A Yes. That's correct.

21 Q Could you identify for me some of the
22 established chain with which you deal?

23 A Salon chains are national accounts which is what
24 we call them. For example, one of the companies that we
25 deal with is called Regis.

1 Q What is Regis?

2 A Regis is a corporation that owns -- my guess is
3 23 separate concepts salon chains. And the concepts are
4 for different demographic groups. Some of them are
5 specific to regions. Some of them are national.

6 One of the biggest ones of the top ten products
7 is called "Trade Secrets." The reason I say that is that
8 it's most prominently known because it's in all the malls
9 across America.

10 Also, Master Cuts and Super Cuts, Max and Mia,
11 Smart Style -- those are in the Wal-Marts across America.
12 They own the Vidal Sassoon chain. They own Jean-Louis
13 David.

14 I think they have a portfolio of about 15,000 or
15 16,000 chain salons or concepts that they own.

16 Another prominent chain that we do business with
17 is JC Penney. The salons at JC Penney are, I want to
18 say, 950 or so, maybe 1,000. And they have varying
19 levels.

20 And in a chain that size in department stores,
21 the amount of square footage that the salon has and the
22 amount of dollars that they have relegates them to like a
23 class. Like there is maybe 300 A's and there is 400 B's
24 and maybe 250 C's. Something like that.

25 So we are in the JC Penney salons. I am in all

1 of the salons with Big Sexy Hair. I am in maybe 600 of
2 the salons that have Big Sexy Hair, but they have Healthy
3 and Silky and they have Short and that sort of thing.

4 Another prominent salon chain or national
5 account is the Ulta Concepts. These are big spa salons
6 in-store.

7 So they are like the mega beauty thing. And
8 there is only, I would say, 110 or 115 across the
9 country, but they are very big and powerful and
10 prominent.

11 They do four or five million each day. They are
12 a big unit --

13 MR. COLUCCI: Objection.

14 THE WITNESS: I'm sorry. I am guessing. I am
15 trying to give you information.

16 MS. JACOBS-MEADWAY: Frank, if you will please
17 let her finish her answer before your objection, I would
18 appreciate it very much.

19 MR. COLUCCI: Yes. I'm sorry. I thought she
20 was finished with her response.

21 THE WITNESS: Beauty Brands is another upscale
22 salon chain concept. It, too -- it's actually called
23 Beauty Brands Day Spa.

24 They not only tell -- they not only have a large
25 amount of real estate that's beautifully done like a

1 department store, but they have a salon and spa and body
2 treatments and all that other kind of stuff. So it's a
3 real upscale kind of thing.

4 Beauty First is a great one of our national
5 accounts.

6 BY MS. JACOBS-MEADWAY:

7 Q What is Beauty First?

8 A Beauty First is another one of the larger
9 superstore kind of location. We do some business with
10 Fantastic Sam's.

11 There is a little bit of a challenge in
12 explaining this properly because, for example, Supercuts,
13 we do business -- there is Supercuts Corporate. They
14 belong to Regis. They are owned by Regis.

15 But the franchisees of Supercuts, we are in a
16 great many of the franchisees' also, but they are
17 individually owned but buy all of their products from
18 Regis and other distributors.

19 So some of those Supercuts that we are in are
20 through the distributors. That is one area where a salon
21 chain would be serviced by both the corporate and a
22 distributor.

23 So it's a little -- it's not black and white, by
24 any means, how it works.

25 MR. COLUCCI: Are you finished with your answer?

EXHIBIT

22

Westfield Chicago Ridge

State Category Select a store category Keywords

[home](#)
[our stores](#)
[dining](#)
[entertainment](#)
[shopping hours](#)
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[getting here](#)
[special offers](#)
[gift cards](#)
[sign in, sign up](#)
[your westfield](#)
[product search](#)

Our Stores

You looked in **all categories**

Sort results by:

Category

Store

Westfield Chicago Ridge

Store	Category	Telephone
Page: <Prev 1 2 3 4 5 6 7 8 9 Next>		
Golden Rose Cosmetics	Beauty and Beauty Services	708-499-8055
Lee Nails	Beauty and Beauty Services	708-425-1444
MasterCuts	Beauty and Beauty Services	708-422-4666
Perfume World	Beauty and Beauty Services	708-424-9819
Rogis Hairstylists	Beauty and Beauty Services	708-423-3323
Sears	Beauty and Beauty Services	708-346-8000
Toe Heaven	Beauty and Beauty Services	708-422-9668
Trade Secret	Beauty and Beauty Services	708-423-7400
Victoria's Secret	Beauty and Beauty Services	708-346-0646
Borders Express	Books	708-424-9190
Bed, Bath & Beyond	Bridal, Bridal Service and Reg	708-423-8257
Carson Pirie Scott	Bridal, Bridal Service and Reg	708-425-5115
Sears	Bridal, Bridal Service and Reg	708-346-8000
Things Remembered	Bridal, Bridal Service and Reg	708-499-1010
Haltmark	Cards and Stationery	708-422-6868
Mobile Solutions Kiosk	Cellular Phone	708-424-6716
PageComm Wireless	Cellular Phone	847-243-9000
T-Mobile	Cellular Phone	708-499-6200
US Cellular	Cellular Phone	708-952-2044
Verizon Wireless	Cellular Phone	708-346-9557
Children's Place	Children's Fashion and Shoes	708-952-9193
Disney Store	Children's Fashion and Shoes	708-423-6060
Gymboree	Children's Fashion and Shoes	708-229-9763
Limited Too	Children's Fashion and Shoes	708-499-4233
Rave Girl	Children's Fashion and Shoes	708-424-1574
Sears	Children's Fashion and Shoes	708-346-8000

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